United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

77-1022

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UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Apellee,

-against-

BERNARD WOODMANSEE, Sr., ROY M. HAMLIN and JACKY E. DuBray,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF OF DEFENDANT-APPELLANT

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UNITED STATES COURT OF APPEALS
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-against-

BERNARD WOODMANSEE, Sr., ROY M. HAMLIN
and JACKY E. DuBRAY,

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BRIEF OF DEFENDANTS-APPELLANTS

ISSUES PRESENTED

1. The Trial Court should have changed the venue of the trial because of the pre-trial publicity and the notariety of the defendant, Woodmansee.

2. The Trial Court should have severed the cases and allowed a separate trial for defendant DuBray.

3. The Trial Court should not have allowed heresay statements of alleged co-conspirators into evidence as against defendant DuBray.

4. The Court erred in limiting the cross-examination of Michael Churchill.

5. The Court erred in failing to charge the jury as requested; The Court erred in failing to instruct the jury that Churchill's testimony before the Grand Jury could be considered by the jury for the trust of the matter asserted instead of for mere impeachment purposes.

STATEMENT OF THE CASE

On May 23, 1976, defendant's Woodmansee, DuBray and Hamlin were arrested in the parking lot of the Stockyard Inn, Montpelier, Vermont. On May 26, 1976, the Grand Jury for the United States District Court, District of Vermont, filed a three count indictment charging these appellants with violation of 18 U.S.C. §2,371,2314,2315. All defendants moved for discovery, relief from prejudicial joinder, change of venue, together with other motions. Hearings were held on Motions on July 12, 1976, July 19, 1976, July 26, 1976, August 16, 1976, September 23, 1976 and October 26, 1976. Of those hearings, five concerned the question of prejudicial joinder, separate trials and change of venue. The hearings held July 12, 1976 and October 26, 1976 included , among other things, the presentation of reports and result of certain surveys conducted and testimony from the person conducting these surveys. The Honorable Justice Albert W. Coffrin denied all Motions for severance and venue change as pertaining to all defendants.

On October 27, 1976, a Jury Trial was commenced by the drawing of jurors and on Sunday, November 7, 1976, the jury returned a verdict of "Not Guilty" as to Count 1 of the Indictment as to defendant, Jacky DuBray and a verdict of "Guilty" as to Counts 2 and 3 of the Indictment as to defendant, Jacky DuBray. On December 13, 1976, defendant DuBray was sentenced to a period of incarceration of five years on

Count 2 of the Indictment and Three years on Count 3 of the Indictment, the sentences running concurrently.

FACTS

On May 21, 1976, Jacky E. DuBray and Roy M. Hamlin were observed in the vicinity of Burlington Vermont by agents of the Federal Bureau of Investigation. Thereafter, they were observed entering a residence at 63 Suzie Wilson Road, Essex Vermont, where a paid police informant, Michael Churchill and Bernard Woodmansee, Sr., Virginia Reynolds and Shirley Bushey among others, were present. Subsequent to their arrival, Bernard Woodmansee, Sr., went to a bedroom in the residence with Michael Churchill in the absence of any other persons and allegedly gave Michael Churchill a quantity of Travelers Checks which Michael Churchill agreed to negotiate in exchange for certain money.

On May 22, 1976, Bernard Woodmansee, Sr., had a conversation with Michael Churchill concerning the negotiation of the Travelers Checks and obtaining an additional quantity of checks. On May 23, 1976, Bernard Woodmansee, Sr., Jacky E. DuBray and Roy M. Hamlin, the defendant's herein met at the Stockyard Restaurant in Montpelier Vermont. Sometime after their arrival Michael Churchill entered the Stockyard Restaurant and went to a closed booth in the back of the restaurant with Bernard Woodmansee, Sr., wherein he gave the quantity of money to Bernard Woodmansee, Sr., in exchange for additional travelers checks. Following Michael Churchill's exit from the Stockyard Restaurant, the three defendants exited the restaurant and entered a car in the parking lot, whereupon they were arrested

by agents of the Vermont State Police and the Federal Bureau of Investigation.

Some time later, on May 23, 1976, members of the Vermont State Police and the Federal Bureau of Investigation entered the residence at 63 Suzie Wilson Road, pursuant to a Search Warrant and following a search of the premises, seized a quantity of travelers checks from a bedroom night stand in the premises.

The travelers checks delivered to Michael Churchill by Bernard Woodmansee and the travelers checks seized from the night stand at 63 Suzie Wilson Road, were identified as checks that were stolen from the General Electric Company, Schenectady, New York. Following his arrest, Bernard Woodmansee, Sr., made two spontaneous statements which the court deemed inculpatory in nature.

On May 26, 1976, the United States District Court, District of Vermont Grand Jury returned a three count indictment against Bernard Woodmansee, Sr., Jacky E. DuBray, Roy M. Hamlin and Virginia Reynolds, charging them as follows: Count 1 §2314 & 2 of Title 18 U.S.C.; Count 2, §2315 & 2 of Title 18 U.S.C.; Count 3, §371 Title 18 U.S.C. Numberous evidentiary hearings and arguments were held before the Honorable Albert W. Coffrin on the issues of the supression of certain articles seized, discovery and inspection of certain articles and statements in the possession of the prosecution, by the defense and upon the issue of the relief from the prejudicial

prosecution an Order of Protection was issued by the Honorable Justice Coffrin dated September 7, 1976 which deprived the defendant DuBray of certain witness lists and other information to which he had normally been entitled if he had not been tried with defendant Woodmansee. Again, the defendant DuBray moved for a severance as relief from this, said Motion being denied.

The Honorable Justice Coffrin denied all Motions for Severance and Change of Venue and indicated that it was the Court's opinion that the proper voir dire of the jury could cure any alleged prejudice which may be present on the part of prospective jurors.

On October 20, 1976, the Honorable Justice Coffrin issued an Order setting forth the rules for the drawing of the jury which called for twelve (12) joint peremptory challenges to be exercised by the defense and the Court exclusive voir dire of the jury. Defendant DuBray had previously submitted a motion for additional peremptory challenges.

On October 27, 1976 the jury drawing was commenced and completed by the court. Defendant exercised all of his challenges to which he was entitled. Thirty Eight (38) prospective jurors were questioned, of which Thirteen (13) acknowledged that they knew the name Bernard Woodmansee. Twelve (12) jurors and two alternates were selected. Two of the Twelve primary jurors acknowledged during the voir dire that they knew the name Bernard Woodmansee, and at least

joinder of the defendants in a single indictment and a change of venue of the trial. It was argued that the nature of the crime charged and the notariety of at least one of the defendants would prejudice the defendant, DuBray in a joint trial with him and furthermore, that because of the notariety of Bernard Woodmansee, Sr., and the publicity that the case in question received, that an impartial trial in the Burlington area was impossible. To that end, two surveys were undertaken by Defendant Woodmansee and Defendant Reynolds, which surveys were joined in by defendant DuBray and Hamlin. The result of these surveys were presented at evidentiary hearings on July 12, 1976 and October 26, 1976. The surveys showed conclusively that the majority of the population of the greater Burlington area recognize the name, Bernard Woodmansee and that a very large portion of those recognizing the name immediately linked it with crime. Such a conclusion, it is urged is so material and so inherently prejudicial that any defendants who would be tried with Bernard Woodmansee, Sr., would receive the taint of his negative reputation. In addition, the results surely showed a fair trial for the defendants could not be had in the Greater Burlington area. Appellant contends that the facts brought forth in those evidentiary hearings and the other hearings on the motion to sever and change venue held on August 16, and September 23, 1976, showed substantial reason why the motion should be granted.

As a result of certain pre-trial motions by the

one juror acknowledged that he linked that name with criminal activity. Challenges for cause on this issue were denied.

Trial commenced October 28, 1976 and continued until Sunday, November 7, 1976. Testimony from paid police informant, Michael Churchill, concerning all statements made by Bernard Woodmansee to him were admitted to the Judge subject to being later stricken if a conspiracy was not established on the ground that such statements as to defendant DuBray were heresay and not within the co-conspirators heresay exception. Following the direct testimony of the second witness, Mary Foster, the Court found by a fair preponderance of the evidence, independent of statements of a heresay nature,of the existance of a joint criminal undertaking and conspiracy involving all of the defendant's then on trial. Appellant DuBray contends that a reading of all of the evidence to that point, Page 428 of the Testimony, excluding heresay statements, does not prove any conspiracy connection whatsovever on his part. Furthermore, appellant DuBray contends that the uncontradicted affirmative statements that all alleged criminal transactions between Bernard Woodmansee and Michael Churchill took place out of his presence creates an additional burden which must be overcome by the prosecution's evidence to meet the test required for the establishment of a conspirary.

Throughout the testimony of Michael Churchill and indeed throughout the entire trial, numerous reference to

previous criminal activity on the part of defendant Woodmansee and defendant Hamlin was placed before the jury by the prosecution and by other defense counsel. The reputation of defendant Woodmansee was well established in the jury's mind by direct evidence and innuendo, over the objection of defendant DuBray as to admissability of that evidence. Statements concerning the previous jail sentences of defendant, Woodmansee and defendant, Hamlin were elicited in the presence of the jury. In addition, counsel from defendant DuBray was restricted in his cross-examination of Michael Churchill because of the objection of defendant Woodmansee as to certain items of evidence which defendant DuBray wished to bring out but which would have further tainted the reputation of defendant Woodmansee. Had defendant DuBray been tried independent of defendant Woodmansee and defendant Hamlin, he would have had much greater latitude on his cross-examination of the prosecutions most crucial witness. Furthermore, the numberous statements concerning the previous criminal activity and reputation of the other co-defendants would not have been admitted.

Following the close of the prosecutions case and at that time of the trial when defendant DuBray was expected to come forth with his defense, defendant DuBray's counsel noted to the court that DuBray had been placed in the unconscionable position of having to take the stant and testify in his own defense and risk the retribution of the notorious defendant, Woodmansee or to sit and remain silent and risk

the conviction for the crimes charged. Appellant contends that such a position is not in keeping with the American Judicial System.

Appellant further contends that the raising of this issue by the defendant at this point in the trial brought forth an affirmative duty upon the court to inquire into the nature and extent of DuBray's fear of defendant Woodmansee by way of an in-camera examination of the defendant or otherwise.

During the testimony by Michael Churchill certain inconsistencies in his testimony were brought forth. Defense asked for a specific charge to the jury that Churchill's prior inconsistent statements could be considered by them for the truth of the fact asserted and not merely for impeachment purposes. This request was denied by the trial judge. Throughout the trial there was no evidence whatsover that any of the defendants had at any time been outside of the State of Vermont or had traveled interstate.

Under these circumstances, and for the reasons expressed in appellants arguments, the defendants should have received separate trials in a location other than Burlington Vermont and that during those trials heresay statements of other defendants should not be allowed before the jury until such time as a conspiracy has been proven by independent direct evidence and that all inconsistent statements of Michael Churchill be treated in accordance with Rules 607 and Rule 802, Federal Rules of Evidence and that the Trial Order of Dismissal requested by the

defendants should be granted in that the prosecution has not proven any interstate transportation or any conspiracy.

ARGUMENT

POINT I: THE TRIAL COURT SHOULD HAVE CHANGED THE VENUE OF THE TRIAL BECAUSE OF THE PRE-TRIAL PUBLICITY AND THE NOTARIETY OF THE DEFENDANT WOODMANSEE

The Trial Court abused is discretion in failing to grant a Change of Venue in this matter because there was evidence, great pre-trial publicity and notariety of a negative manner as to defendant Woodmansee and the incident involved. In pre-trial motions at evidentiary hearing had thereon, two surveys were presented to the court illustrating the notariety of the defendant Woodmansee. Both of these surveys indicated that defendant Woodmansee was known by at lease a majority of the potential jurors in the Greater Burlington area. This knowledge of defendant Woodmansee was shown by the surveys to indicate a negative feeling toward defendant Woodmansee and people associated with him. The results of these surveys are a part of the record and contained in defendant Woodmansee's appendix. There was no evidence before the trial court that either of the surveys were invalid in any way. A conclusion of the first survey stated in part

" A total of 26 (63%) of those rating Woodmansee, actually gave him the lowest possible score of 0 (Several even attempted to give him scores below 0)"

The second survey conducted the last week of September, 1976 reinforced the findings of the first survey. The report concluded " The recognition level of Woodmansee can be considered very high" " We can be fairly certain that the entire population

includes at least 41% and perhaps 53% who on hearing Woodmansee's name, immediately link him with crime." These results linked with the pre-trial publicity concerning the incident involved in the instant case which was submitted to the trial court indicated that Bernard Woodmansee, Sr., and his co-defendants could not receive a fair trial in the Greater Burlington area.

The Honorable Albert W. Coffrin in his Decision not to change venue, indicated that he felt that the potential prejudice of certain prospective jurors. However, in spite of that ruling, the Judge severally limited the defense counsel in not allowing them to individually voir dire the jurors. Furthermore, the court conducted a very limited voir dire of the jury and left two jurors who acknowledged prior knowledge of Bernard Woodmansee on the jury dispite challenges.

It is interesting to note that while both surveys indicated that at least 50% of the population of prospective jurors would recognize the name of Bernard Woodmansee only 34% of the prospective jurors questioned, acknowledged such familiarity. Appellant contends that considering the second conclusion of the survey, that those who knew Bernard Woodmansee would link him with criminal activity and with this portion of prospective jurors acknowledging familiarity with defendant Woodmansee, that the trial court should have discontinued the voir dire and transferred the trial to another district court. The Court's voir dire, was not extensive enough to ferret

out the potentially prejudiced juror. Once the issue of a prejudicial trial because of the potential reputation of one of the co-defendants has been raised, the Court has an affirmative duty to take every precaution to ensure a fair trial. In a similiar circumstance in United States v. Alloi 511 F2d 588 (1975) at 598 "During the jury voir dire which required three days, the trial court allowed the defense twenty peremptory challenges and the prosecution twelve... A jury of twelve with six alternates was finally selected but even thereafter, the trial judge personally interviewed each juror and alternate as to prejudice." This procedure as set forth by the Alloi case differs greatly from the one day cursory voir dire undertaken in the immediate case.

Furthermore, it was error to refuse to grant a challenge for cause as to anyone on the jury who acknowledged the familiarity with defendant Woodmansee as was done by Juror Mary Johnson. Upon her voir dire, Juror Mary Johnson acknowledged that she recognized the name from the paper, R,P35,L24 and had also heard the name on television, R,P36, L 12 . Juror Johnson was challenged, R,P70,L 24, for cause by the defendants.

In addition the trial court abused it's discretion in allowing Juror Norbert Pratt to remain on the jury after he acknowledged recognitition of the name and connection of that name with criminal activities, R, P 211. . Murphy v. Florida, 421 U.C. 794 held that "persons who have learned from news sources of a defendants prior criminal record are presumed to be prejudiced." Defendants could certainly not receive a fair trial

with a juror who is presumed to be prejudiced sitting in judgment of them.

The Court's reluctance to transfer the location of the trial prior to the questioning of prospective jurors should have been overcome by the responses elicited from the jurors concerning prior news coverage and prior recognition of defendant Woodmansee. Sheppard v. Maxwell, 384 U.S. 333, 86SCt.1507(1966) Singer v. U.S.,380 U.S. 24,85S.CT.983(1965)

The factors which should be considered in considering a motion for a venue change have been carefully set forth in Sheppard v. Maxwell and Platt v. Minesotta Mining,376 U.S. 240 (1963) These factors include the location of the defendant, the location of witnesses, the location of counsel, the expense to the parties, relative accessability to a place of trial, and others. As to defendant DuBray, who resides in Albany, New York and was represented by an Albany New York attorney; the relative merits would indicate a transfer to the Northern District of New York would be proper. All but one or two of the prosecution witnesses were employees or paid informants of the United States government. The equities of the situation would dictate that as to defendant DuBray the trial should have been transfered. Surely a change of venue would not have inconvenienced the government in the administration of justice by requiring them to transport the FBI Agents and State Troopers to Albany New York and a substantially better panel could have been sworn in the Northern District

of New York. United States v. Bonnanno, 177F Sup 106 (1959)

The trial court's position that the inheritently prejudicial location of the trial in Burlington Vermont following the pre-trial publicity of the incident and the notorious nature and prior publicity surrounding defendant Woodmansee could be overcome by a proper voir dire was not established by the voir dire conducted by the trial court and, as a result, defendant DuBray did not receive a fair and impartial jury.

POINT II: THE TRIAL COURT SHOULD HAVE SEVERED THE CASES AND ALLOWED A SEPARATE TRIAL FOR DEFENDANT DUBRAY.

All of the arguments put forth by appellant in Point I as to the change of venue also bear upon Point II, in that the bulk of the pre-trial publicity which caused the prejudicial atmosphere in the Burlington area at the time of the trial was caused by the presence of defendant Woodmansee in this case. By trying defendant DuBray with this notorious criminal, defendant DuBray could not receive a fair trial and was found guilty by association for having come before the court and the jury with a person such as defendant Woodmansee.

Because of defendant Woodmansee notorious character and because of certain allegations put forth by the prosecution in it's application for a protective Order, which was issued by the Court, citing the notorious nature of defendant Woodmansee; defendant DuBray was deprived of witness lists prior to the trial. Surely such lists would have been made availabe to him so that he could more properly and adequately prepare his defense if he had not been tried with defendant Woodmansee.

In addition, because the appellant herein was joined for trial with defendant Woodmansee, numerous prejudicial statements concerning defendant Woodmansee's prior criminal activities and moral character, together with statements concerning defendant Hamlin's previous jail sentence were introduced into evidence before the jury. These statements and innuendo containing defendant's Woodmansee's character and reputation were prevalant throughout the trial. In spite of certain cautionary instructions-

by the Judge the jury received definite information concerning defendant Woodmansee and defendant Hamlin's prior criminal record. Had defendant DuBray been tried severally many of these such statements would not have come into evidence. In addition, the taint upon defendant DuBray received from these statements would have been much less severe had defendant Woodmansee not been present with him before the jury. While this issue alone is not per se grounds for a severance, the cumulative effect upon the jury of this issue, together with the other issues raised herein setting forth a prejudicial joinder are sufficient.

Defendant DuBray is limited in his cross-examination of the prosecution's chief witness, Churchill, because of the objections of defendant Woodmansee. Defendant DuBray attempted on several occasions during Churchill's testimony to bring out the pressure which had been applied upon Churchill by the authorities to get a case against Woodmansee. In order to do that, certain of Woodmansee's prior criminal activities had to be explored. This line of questioning was cut off by objections from defendant Woodmansee and defendant DuBray was, therefore, limited in his ability to bring forth his defense, not by the prosecution, but by the joint trial with defendant Woodmansee. A.p 126-139. The trial court erred in not recognizing it's continuing duty

at all stages of the trial to grant a severance when prejudice appeared. United States v. Kelly 349 F.2d. 720 (1965) Defendant DuBray made several motions during the trial for a mis trial and a severance because of the on-going nature of the prejudicial statements and restrictions to which he was subject because of the joint trial.

The situation of a joint trial placed defendant DuBray in a very tenious position. Because of the notorious nature of defendant Woodmansee, who, as the evidence clearly indicated, defendant DuBray had only met two days prior to his arrest and the proven violent nature of defendant Woodmansee defendant DuBray was forced to choose to either testify in his own behalf and risk the physical retribution of defendant Woodmansee or to remain silent and protect his physican integrity and risk conviction of the crimes charged. Surely a trial which places a man in fear of his personal safety in order to put forth an adequate defense is not sanctioned by our judicial system. Appellant contends that it is unconscionable to place a defendant in such a situation that he must make such a drastic choice. This situation could have been totally avoided if defendant DuBray was tried in the absence of defendant Woodmansee. At the very least, a trial court should have inquired, in camera and outside the hearing of defendant Woodmansee, as to the nature and extent of defendant DuBray's reluctance to come forth with the defense as a result of his fear of a co-defendant.

POINT III: THE TRIAL COURT SHOULD NOT HAVE ALLOWED HERESAY STATEMENTS OF ALLEGED CO-CONSPIRATORS INTO EVIDENCE AS AGAINST DEFENDANT DUBRAY

It is well established that statements of heresay nature cannot be introduced into evidence unless those statements fall within one of the specifically prescribed exceptions to the heresay rule. Federal Rules of Evidence, R802. One of the accepted exceptions to this rule is the so called, co-conspirators rule which encompasses statements made by a co-conspirator in the furtherance of a conspiracy. In order to allow the admissability of such statements the court must find by a fair preponderance of the evidence that a conspiracy has been established. In order to meet the burden of the fair preponderance of the evidence the court is restricted to the scrutiny of direct independent evidence only. The court erred in this case when it ruled that it had found by a fair preponderance of evidence that a conspiracy had been established as to defendant DuBray. A review of all of the testimony and exhibits which were introduced to that point in the trial excluding all heresay statements does not link the defendant DuBray with any conspirary whatsover. At the time of the ruling the trial court herein had heard testimony from Michael Churchill and also testimony from Mary Foster. Defendant DuBray had objected to the admission of such heresay evidence as against him. R,P 38-39 . Through that point in the trial the only testimony of a non heresay nature which was in

evidence was a statement that Michael Churchill has observed defendant DuBray enter residence at 63 Suzy Wilson Road and that at that time he was introduced to Bernard Woodmansee and others who were present. Furthermore, that some two days thereafter defendant DuBray was present in a restaurant with defendant Woodmansee and was thereafter arrested with him.

There is in fact, direct evidence which specifically contradicts the theory that defendant DuBray was a co-conspirator. This evidence was not overcome and the fair preponderance of the evidence burden was not met. The direct, uncontradicted evidence is that on both occasions when Bernard Woodmansee engaged in illegal transactions with Michael Churchill, he left the room where defendant DuBray was present and conducted such illegal activities outside the hearing and sight of defendant DuBray. The evidence further indicates that on the incident of May 23, 1976, there was no one else in a room,which contained no windows,other than defendant DuBray, defendant Hamlin, defendant Woodmansee and Michael Churchill. In spite of those facts, defendant Woodmansee left the presence of defendant DuBray in order to conduct his illegal activities. The government has failed to prove by any preponderance of the evidence that conspiracy existed. If two possibilities can be inferred from the evidence, neither can be said to have been proven by a preponderance of the evidence required to sustain the burden of necessary proof. Aluminum Company of America v. Preferred Metal Products, 354 F2d 658 (1965)

A preponderance of the evidence exists when such evidence, has, when considered and compared with that opposed to it, more convincing force and produces in the mind of the tryor of facts a belief that such evidence is more likely true than not true. United States v. Kansas Gas and Electric Company, 215 F Supp 532 (1963). A review of the testimony from Pages 1 through 428, at which point the Judge made the ruling in question, exluding all heresay statements, does not give any direct evidence that the defendants engaged in the criminal activity which was charged. There is no evidence in the entire record of this trial which indicates that any of the defendants were ever outside of the State of Vermont in the time of question, and the charges surrounding the transportation of stolen securities interstate have not been established and the conspiracy to do so has therefore not been established.

POINT IV: THE COURT ERRED IN LIMITING THE CROSS-EXAMINATION OF MICHAEL CHURCHILL

The Court erred in refusing to permit cross-examination of a misdeameanor conviction of Churchill which occured subsequent to his decision to cooperate with the government.

This issue is more fully and specifically discussed in the argument of defendant Hamlin as prepared by Michael S. Kupersmith, Esq., and defendant DuBray restates and realleges each and every argument contained therein as if fully set forth herein.

POINT V: THE COURT ERRED IN FAILING TO CHARGE THE JURY AS REQUESTED; THE COURT ERRED IN FAILING TO INSTRUCT THE JURY THAT CHURCHILL'S TESTIMONY BEFORE THE GRAND JURY COULD BE CONSIDERED BY THE JURY FOR THE TRUTH OF THE MATTER ASSERTED INSTEAD OF FOR MERE IMPEACHMENT PURPOSES

Defendant Hamlin more specifically sets forth the argument and position with respect to this argument in his Brief as prepared by Attorney Michael S. Kupersmith and defendant DuBray restates and realleges each and every argument as if fully set forth herein.

THE COURT ERRED IN FAILING TO CHARGE THE JURY THAT A PERSON'S MERE PRESENCE IS INSUFFICIENT TO ESTABLISH ACTUAL OR CONSTRUCTIVE POSSESSION OF PROPERTY

This point is more fully discussed and set forth in the Brief of defendant Hamlin by Michael S. Kupersmith and is incorporated herein as if fully set forth.

Defendant DuBray hereby joins in each and every argument contained in the Briefs of defendant's Woodmansee and defendant

Defendant DuBray hereby joins in each and every argument contained in the Briefs of defendant Woodmansee and defendant Hamlin as if fully set forth herein and joins in their arguments as set forth therein.

CONCLUSION

For the reasons stated herein, the rulings of the District Court should be reversed, and a new trial granted to the defendant DuBray, said trial to be separate and apart from the co-defendant's Hamlin and Woodmansee and to be tried in a location other than Burlington Federal District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JAMES D. LINNAN, hereby certify that I have served a copy of the Brief of Defendant, Jacky E. DuBray on the following individuals at their respective office addresses on this 9th day of May, 1977.

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